

Instructions for filing a Motion to Avoid Lien

Under § 522(f), Debtor “may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption[.]” A lien impairs an exemption to the extent that the value of Debtor’s interest in the property is less than the sum of the lien, all other liens on the property, and the amount of exemptions Debtor could claim if no liens attached to the property.

While undisputed allegations of fact may be deemed admitted, undisputed legal conclusions are not entitled to the same treatment. Whether an exemption is impaired is a legal conclusion. Thus, Debtor’s attorney should allege the *facts* supporting such conclusion in the Motion – *i.e.* the value of the property, and the amount of liens and exemptions on the property. Allegations of fact in Debtor’s Schedules are not deemed admitted by a lien creditor’s failure to respond to the Motion. Without allegations of fact in the Motion, the court does not have a sufficient factual basis to form legal conclusions, so even unchallenged motions will be denied.

Moreover, to the extent the lien in question might attach to a vehicle or to real property, the Motion should allege that evidence for Debtor’s valuation of the vehicle or real property exists (a Rule 11 statement), or attach such evidence as an exhibit to the Motion. Sufficient evidence can be readily obtained from NADA guides (for vehicles) and tax records (for real property).